IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.W.P. No.17967 of 2005
Date of Decision:25.01.2007

M/s Competent Engineers, Jalandhar through its partner
.....Petitioner

Vs.

Commissioner of Central Excise, Jalandhar and another
.....Respondents

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Jagmohan Bansal, Advocate for the petitioner.

Ms. Anjali Kukkar, Advocate for the respondents.

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RAJESH BINDAL, J.

The petitioner has approached this Court by filing the present petition challenging order dated 21.9.2005 (Annexure P.4) passed by Settlement Commission, Customs and Central Excise (for short, `the Commission') whereby the Commission has refused to grant waiver of interest to the petitioner.

Briefly the facts, as pleaded in the petition, are that the petitioner is engaged in the manufacture of parts for Railways falling under Chapter Heading 94 and 86 of the Schedule to Central Excise Tariff Act, 1985. The petitioner is doing job work for Railway Coach Factory, Kapurthala (hereinafter referred to as `the RCF'). During the period January, 2000 to December 2001, the petitioner received blanks from RCF for job of punching/notching and bending, as per their specifications, against job charges ranging from Rs. 54/- to Rs. 61/- per piece. The duty was paid by the petitioner on the value of job work charges charged by him from the RCF. No duty was paid on the value of blanks supplied free of cost by the RCF. The petitioner was issued a notice to show cause as to why the amount of duty amounting to Rs. 3,95,847/- be not recovered from him on account of his not including the value of raw material in the assessable value for levy of excise duty. Levy of interest and penalty was also proposed. The Assistant Commissioner of Central Excise, vide order dated

10.2.2004 confirmed demand of Rs. 99,622/- as duty against the petitioner in addition to imposition of interest and penalty. The order passed by the adjudicating authority was appealed against by the petitioner before the Commissioner of Central Excise (Appeals). During the pendency of the appeal, the petitioner approached the Commission admitting his full liability of duty, however, prayed for immunity from interest and penalty. The Commission vide its order dated 21.9.2005 granted full immunity to the petitioner in respect of penalty, however, no waiver from payment of interest was granted. It is on this account that the petitioner is before this Court.

In reply filed, the respondents have controverted various pleas raised by the petitioner in the writ petition. It is stated that the petitioner is not entitled to challenge only a part of the order. The same is merely an effort to delay the payment of interest. The order passed by the Commission is just and fair which is based on appreciation of facts of the present case where it has been found that the petitioner is not entitled to immunity from interest.

We have heard Shri Jagmohan Bansal, Advocate, learned counsel for the petitioner and Ms. Anjali Kukkar, Advocate, learned counsel for the respondents and perused the paper book.

Counsel for the petitioner, while reiterating the submissions made in the writ petition regarding rejection of his prayer for waiver of interest, admitted that the order being totally non-speaking is liable to be struck down on this score alone. Further alleging the order to be arbitrary, learned counsel referred to number of earlier orders passed by the Commission where in similar facts and circumstances full waiver of interest was granted. He has placed reliance on Settlement Application Nos.S.A.(E) No.778 & 779/2005 – **M/s Amit Enterprises, Ludhiana and another v. Customs and Central Excise** decided on 17.3.2005; S.A.(E) Nos.18 & 19/2005 – **M/s Shree Parashnath Re-Rolling Mills Ltd. And another v. Customs and Central Excise** – decided on 16.9.2005; S.A.(E) No.536/2004 – **M/s Mahalakshmi Spinners Ltd., Panipat v. Customs and Central Excise** decided on 17.9.2004; S.A.(E) No.508/2003 – **M/s Drish Shoes Ltd., Panchkula v. Customs and Central Excise** decided on 2.6.2004; S.A.(E) No.715/2004 – **M/s Narindera Textiles Mills, Ludhiana**

v. Customs and Central Excise decided on 15.12.2004; S.A.(E) Nos.13-14/2005 – **M/s Shivom Iron & Steel Co.(P) Ltd., Jharkhand and another v. Customs and Central Excise** decided on 29.8.2005; S.A.(E) No.15/2005 – **M/s Jawala Steels Pvt. Ltd., Durgapur v. Customs and Central Excise** decided on 22.7.2005; S.A.(E) Nos.5 & 6/2005 – **M/s Amochem, Kolkata and another v. Customs and Central Excise** decided on 31.8.2005; S.A. (E) Nos.26-27/2004 – **M/s Balmukund Concast Ltd., Bihar and another v. Customs and Central Excise** decided on 4.10.2004; S.A.(E) Nos.7-8/2004 – **M/s MSP Rolling Mills Pvt. Ltd., Howrah and another** decided on 16.7.2004; S.A.(E) Nos.853-854/2005 – **M/s Balvir Weaving Factor, Ludhiana and another v. Customs and Central Excise** decided on 13.6.2005; S.A.(E) No.536/2004 – **M/s Mahalakshmi Spinners Ltd., Panipat v. Customs and Central Excise** decided on 17.9.2004; S.A.(E) Nos.5 & 6/2005 – **M/s Amochem, Kolkata and another v. Customs and Central Excise** decided on 31.8.2005; S.A.(E) Nos.24 & 25/2005 – **M/s Adhunik Corporation Ltd., Angadpur, Durgapur and another v. Customs and Central Excise** decided on 29.11.2005, S.A.(E) Nos.26 & 27/2005 – **M/s C.P.Re-Rollers Ltd., Durgapur and another v. Customs and Central Excise** decided on 21.11.2005, S.A.(E) No.935/2005- **M/s Dabur India Ltd., Sahibabad (U.P.) v. Customs and Central Excise** decided on 30.11.2006 and S.A. No.224/2006 – **M/s Orissa Industries Ltd., Orissa v. Customs and Central Excise** decided on 11.9.2006. It is further submitted that while not granting complete waiver of interest to the petitioner, the Commission has failed to exercise the jurisdiction vested in it.

Learned counsel has also referred to judgment of Bombay High Court in 2005 (192) E.L.T. 111 – **Bhilwara Melba De Witte Ltd. v. Union of India,** wherein on account of contradictory views taken by the Commission on the issue of waiver of interest and order impugned there being non-speaking, the matter was remitted back to the Settlement Commission for fresh consideration.

On the other hand, learned counsel appearing for the respondents submitted that the power having been exercised by the Commission, which is in the form of a settlement, cannot be faulted with

and should not be interfered with in the writ jurisdiction by this Court.

After hearing learned counsel for the parties, we find force in the submissions made by learned counsel for the petitioner. A perusal of number of orders passed by the Commission in various cases shows that complete waiver from payment of interest was granted. However, in the present case, the same has not been granted at all and for that no reasons are forthcoming. Faced with similar situation, where no reasons were assigned by the Commission for rejection of claim for waiver of interest, Bombay High Court in **Bhilwara Melba De Witte Ltd.'s case (supra)** remitted the matter back to the Commission for reconsideration. Various orders referred to and relied upon by the petitioner have also not been disputed by learned counsel for the respondents.

Keeping in view the totality of circumstances, we deem it appropriate that the ends of justice in the present case would be served in case the matter, on the issue of claim of waiver of interest, is remitted back to the Commission for re-consideration.

Accordingly, the writ petition is allowed. The order passed by the Commission dated 21.9.2005 (Annexure P.4) is set aside to the extent, waiver of interest is not granted to the petitioner and the matter is remitted back to the Commission for fresh consideration in accordance with law. The petitioner is directed to appear before the Commission on March 19, 2007 for further proceedings.

(RAJESH BINDAL)
JUDGE

January 25, 2007 **(M.M.KUMAR)**
renu **JUDGE**